Supreme Court, U. S.
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In the Supreme Court of the United States

October Term, 1976
No. ~~75-208~~ 76-258

ELIJAH W. RATCLIFF,
Petitioner

vs.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT, HOUSTON DIVISION,
Respondent

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS AND PETITION FOR WRIT OF MANDAMUS

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IN THE SUPREME COURT OF THE UNITED STATES

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vs.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION,

Respondent

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS

To the Honorable Warren E. Burger, Chief Justice, and the Justices of the Supreme Court of the United States:

Petitioner, Elijah W. Ratcliff, moves the Honorable Warren E. Burger, Chief Justice of the Supreme Court of the United States, for leave to file the attached application entitled Petition for Writ of Mandamus and for an order directing the United States District Court for the Southern District of Texas, Houston Division, wherein the Honorable Allen B. Hannay is Presiding Judge, hereinafter called

Respondent, to issue the writ of habeas corpus subjiciendum in accordance with the relief sought through the described and attached application and for the additional relief justice may require to terminate the subject wrongful detention and restraint upon Petitioner's liberty.

ELIJAH W. RATCLIFF
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

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Petitioner

vs.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION,

Respondent

PETITION FOR WRIT OF MANDAMUS

To the Honorable Warren E. Burger, Chief Justice, and the Justices of the Supreme Court of the United States:

Petitioner, Elijah W. Ratcliff, hereby applies for a writ of mandamus against Respondent, the United States District Court for the Southern District of Texas, Houston Division, and in support of the petition states:

ORDERS AND OPINIONS BELOW

The proceedings in the State Court of last resort related to this petition are reported as *Ratcliff v. Texas,* 504 S.W.2d 883 (1974). This is the second original application for a writ of mandamus before this Court involving the issues presented to it under docket numbers 74-5595 and 75-208, through motions for leave to file petitions for extraordinary writs, denied in both instances. The earlier mandamus application was presented to the Circuit Justice for the United States Court of Appeals, Fifth Circuit, the Honorable Lewis F. Powell, and docketed as No. A-495, October Term, 1975. The action before Respondent was docketed on the 7th day of November, A.D., 1975, but Respondent has failed to issue the writ or enter an order moving the case towards disposition pursuant to its jurisdiction. Orders and opinions of the related proceedings in the District Court of Polk County, Texas, No. 9432, the District Court of Montgomery County, Texas, No. 11,064, and the Court of Criminal Appeals of Texas, No. 47,600, are as attached to the Second Motion for Leave To File Petition for Extraordinary Writ of Certiorari, No. 75-208, before this Court. A copy of such motion has been served on Respondent, the State of Texas and each of the parties in the primary docket before the Supreme Court of the United States, No. 75-208.

JURISDICTION

Basic jurisdiction in this action and petition is by virtue of Title 28, *United States Code,* Sections 1651 (a) and (b) and 1257 (2) and (3). Authority for the relief sought flows further from the inaction of Respondent relevant to authority vested by Title 28, *United States Code,* Sections 1652 and 2241 through 2255, inclusive; Title 42, *United States Code,* Sections 1981 through 1984, inclusive; and *United States Code,* Const. Amends. V, VIII, XIII, XIV and XV.

QUESTIONS PRESENTED

1. The constitutional requirements of due process forbid judicial and magisterial acquiescence in the fraudulent conviction and detention of a citizen through arbitrary refusal to execute duties essential to fundamental fairness.

2. A United States District Court may not arbitrarily, unreasonably and capriciously discriminate against a petitioner because of his race or to facilitate the clouding of irregularities by members of the local judiciary and bar.

3. The unnecessary and unreasonable delay by Respondent in acting upon Petitioner's Application for Writ of Habeas Corpus merits issuance by this Court of a writ of mandamus ultimately commanding Respondent to enter an order in accordance with applicable law and releasing Petitioner from his wrongful detention and restraint.

STATEMENT OF CASE

This petition is related to the issues presented before the Court in *Ratcliff v. Texas, et al.*, No. 74-5595 and No. 75-208. Petitioner was subjected to denial of due process through consecutive restraints by State of Texas officials preventing a timely review of his appeal from the Court of Criminal Appeals of Texas. Following memorandum opinions by the Supreme Court of the United States denying the described motions, without prejudice, Petitioner returned to the United States District, where a removal action was previously docketed in the litigation as Cr. No. 71-H-228, seeking habeas corpus relief.

The Application for Writ of Habeas Corpus names William J. Estelle, Jr., Director, Don H. Costilow and Loyd D. Hunt, Wardens of Coffield and Darrington Units, respectively, of the Texas Department of Corrections as respondents. It was officially initiated on the 7th day of November, A.D., 1975, in the United States District Court for the Southern District of Texas, Houston Division, as Civ. No. 75-H-1945. However, no writ or other order advancing a disposition of the proceeding has been entered by Respondent while its inaction perfects dilatory tactics by the Attorney of Record for Respondents in such habeas corpus action.

The dilatory tactics have effectively extended the denial of Petitioner's right to equal protection under the laws as he is being wrongfully detained for asserting rights which are firmly established to protect his property in-

terests in bank account funds designated for writing convention checks under Texas and general American precedents.

The subject prosecutor and complainant along with the applicable State judiciary became antagonized by Petitioner's refusal to pay for a defective 1966 Chevrolet pick-up truck during 1970 and designedly but fraudulently reversed all pertinent criminal precedents on the issue to establish a conviction of Petitioner contrary to the Fourteenth Amendment to the Federal Constitution's letter and spirit.

REASONS FOR GRANTING THE PETITION

More than six (6) months have elapsed since the subject habeas corpus action was submitted before Respondent without issuance of the writ of habeas corpus or other orders contemplated by law even though all statutory filing fees and other prerequisites have been satisfied by Petitioner (see No. A-495, October Term, 1975). Title 28, *United States Code,* Sections 1443 and 2241 through 2255, inclusive; Title 42, *United States Code,* Sections 1981, 1982, 1983 and 1984; *United States Code,* Const. Amends. V, VIII, XIV and XV.

Title 28, *United States Code,* Section 2243, by its language contemplates that a meritorious application for habeas corpus relief shall be entertained and acted upon in good faith within a matter of days as opposed to even weeks, and Petitioner submits that delay efforts effectively encompassing a period in excess of six (6) months are not justifiable.

The unconstitutionality of the State's application of *Vernon's Ann. P.C.,* Art. 1410 and Art. 1413 (now repealed effective January 1, 1974), could hardly be more vividly exemplified than under the present facts. Decisions of the Court of Criminal Appeals of Texas with respect to white citizens have been called to the attention of Respondent encumbering a period from 1946 through the date of the appellate Court opinion in this litigation expressly sustaining the principles presented by Petitioner as indispensable to the offense of theft by false pretext. Such

principles summarized hold that due process requires that a criminal statute give fair warning of the conduct it prohibits, and the highest court of a State cannot circumvent the legislature and the *ex post facto* preclusion and achieve such a result by judicial construction. *Hesbrook v. State,* 194 S.W.2d 260 (1946); *Beard v. State,* 287 S.W.2d 667 (1956); *Eason v. State,* 320 S.W.2d 11 (1959); *Garcia v. State,* 501 S.W.2d 652 (1973); *Vernon's Ann. C.C.P.,* Art. 9.01; *V.T.C.A., Bus. & C.,* Arts. 3.409, 3.417, 4.303 and 4.403; *Bouie v. City of Columbia,* 378 U.S. 347 (1964). Such cases establish that the State must prove that a false pretext induced the surrender of the subject property to the accused while the State has not approached proof of any false pretext by Petitioner herein.

It is, also, noteworthy that the record has been manipulated to give the appearance that Petitioner's tax records were before the trial Court as evidence, but the trial Court merely directed that Petitioner, Defendant, be allowed on the evidence a bill, as proffered, and objection to the items of evidence was expressly sustained for the prosecution.

CONCLUSION

For the foregoing reasons and additional premises described more elaborately in Petitioner's Second Motion for Leave To File Petition for Extraordinary Writ of Certiorari docketed as No. 75-208, Supreme Court of the United States, the Honorable Warren E. Burger, Chief Justice, or his designated Associate Justice, Supreme Court of

the United States, is requested to consider the merits of this mandamus action and issue, or order Respondent to show cause why it should not be issued, the writ of mandamus directing Respondent, the United States District Court for the Southern District of Texas, Houston Division, to execute, forthwith, the writ of habeas corpus subjiciendum, or other proper order, as requested by the application before it entitled and numbered Elijah W. Ratcliff, Petitioner, v. William J. Estelle, Jr., Don H. Costiow and Loyd D. Hunt, Respondents, CA No. 75-H-1945, and upon consideration of the evidence and records, to execute an order commanding Respondents therein to release Petitioner from the described improper detention and restraint, without day. *Brown v. Allen,* 344 U.S. 443 (1953); *United States ex rel. Kemp v. Pate,* 359 F.2d 749 (1966); *Picard v. Connor,* 404 U.S. 270 (1971), at page 277; *Pryor v. Beto,* 460 F.2d 307 (1972).

ELIJAH W. RATCLIFF
Petitioner, Pro Se
Darrington Unit B-1-18
Route 2, Box 59
Rosharon, Texas 77583

_____

Date

AFFIDAVIT

State of Texas,
County of Brazoria:

I, Elijah W. Ratcliff, Petitioner, Pro Se, in the foregoing Motion for Leave To File Petition for Writ of Mandamus and Petition for Writ of Mandamus, do solemnly declare and state under penalties of perjury as if executed before a proper notary public that each of the matters of fact asserted in the instrument is within my personal knowledge and is true and correct, *in toto.*

I state further that a copy of the described instrument was served this — day of August, A.D., 1976, on Respondent at 515 Rusk Avenue, Houston, Texas 77002, and on the Attorney of Record for Respondents in the related and primary habeas corpus action before Respondent addressed to Hon. John L. Hill, Attorney General of Texas, 723 Main Street, Houston, Texas 77002, as well as an attorney appointed in the proceeding, Hon. Charles Rice Young, Attorney, 1290 Pennzoil Place-Zapata Tower, 711 Louisiana, Houston, Texas, 77002, by first class United States mail with postage paid in full and deposited at Rosharon, Texas 77583.

Witness my hand this — day of August, A.D., 1976.

_____

Affiant